against the regulations was within the ambit of both these purposes. The only effective way of securing compliance with regulations was to prosecute those who did not comply.

*Case referred to:—*

(1) *Seow Tai Keng v. R.* (1953) M.L.J. 132 dissented from

MAGISTRATE'S APPEAL heard before a Court of three Judges.

*G. S. Hill* (Crown Counsel) for the appellant.

*F. R. N. H. Massey* for the respondent.

The judgment of the Court was delivered by:—

**Murray-Aynsley C.J.:** —This appeal raises a a question of the powers of the Controller of Foreign Exchange under the Fifth Schedule of Exchange Control Ordinance, 1953, (Part I para. 1(1)). Here a notice was issued to the respondent in the following form:—

"In exercise of the powers conferred upon me by Part I of the 5th Schedule to the Exchange Control Ordinance 1953 I hereby direct that you shall, within seven days of the receipt of this letter, attend at this office to give verbal information concerning certain transactions in gold and payments which may have been made in contravention of the provisions of the Exchange Control Ordinance 1953 and which are now being investigated and concerning certain documents in connection therewith now in the possession of the Controller, thereby completing the information already furnished by you on the 29th September, 1954."

The respondent did not attend as required by the notice. Proceedings were taken against him and the learned District Judge found that the notice did not comply with the requirements of the Ordinance and dismissed the charge. In his grounds of decision the learned District Judge said:—

"In my opinion the directions of the Controller should specify the information in the possession or control of the accused that the Controller required to be furnished. Otherwise how was one to know whether the Controller had exceeded his powers under paragraph 1(1) Part I of the 5th Schedule of the Exchange Control Ordinance 1953."

We think that this interpretation involves adding something to the Schedule which has the effect of rendering it nugatory. If the Controller knows already he does not need to ask. The notice followed the wording of the Schedule and is, in our opinion, in order.

During the hearing the case of *Seow Tai Keng v. R.*[1], was cited to us. We think that that decision has caused some confusion. It is true that information can only be required to secure compliance with the regulations and to detect evasion. We do not agree that when once the fact of an evasion has been discovered the powers of the Controller are exhausted. We think that the obtaining of evidence against persons guilty of offences against the regulations is within the ambit of both those purposes. The only effective way of securing compliance with regulations is to prosecute those who do not comply. We therefore disagree with the reasoning of the learned Judge in that case.

In the present case the only defence in the Court below was that the notice was defective in form.

In the circumstances we allowed the appeal of the Public Prosecutor, convicted the respondent and imposed a fine.

We observed that in the correspondence the Solicitor then acting for the respondent had made some observations which were both irrelevant and unprofessional and at the trial he cumbered the case with both oral and documentary evidence most of which was irrelevant in itself and inadmissible as obvious hearsay. Such conduct is strongly to be deprecated.

*Appeal allowed.*

Solicitors for the respondent: *Allen & Gledhill.*

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## MAHN SINGH & ORS. v. GUAN SOON TRANSPORT CO. LTD.

[O. C. J. (Murray-Aynsley C.J.) March 10, 1955]

[Singapore — Suit No. 1725 of 1953]

*Contract — Specific performance — Agreement to purchase land at an auction — Defect of title not disclosed — Misrepresentation entitling the purchasers to rescind.*

This was an action for specific performance. The defendants entered into a contract to purchase certain land in Katong, they having been the highest bidders in an auction and thereafter signed the usual memorandum and paid a deposit. They resisted this claim owing to the circumstances that many years before the then owner of the land in question and other land in the neighbourhood had submitted to the authorities a plan for development as the result of which the land in question was shown on the general improvement plan as an open space under s. 50(1)(g) of the Singapore Improvement Ordinance (Cap. 134), as a consequence of which, by virtue of s. 58(1) of the same Ordinance, it was not possible to use the land otherwise than as an open space without the permission of the Singapore Improvement Board.

The plaintiffs were fully aware of this state of affairs but there was no disclosure by them at the time of the sale. In fact before the sale the land was advertised as a "valuable freehold land". However the restriction could have been discovered by examination of the relevant plan which was open to public examination.

Held: the description "valuable freehold land" was, in the circumstances of the case, a misrepresentation entitling the purchasers to rescind, and they were entitled to judgment.

*Cases referred to:—*

(1) *Flight v. Booth* (1834), 1 Bing. N.C. 370.

(2) *Dykes v. Blake* 4 Bing. N.C. 463.

(3) *Simmons v. Pennington* (1955) 1 All E.R. 240.

ACTION for Specific Performance.

*K. A. Seth* for the plaintiffs.

*John Laycock* for the defendants.

*Cur. Adv. Vult.*

**Murray-Aynsley C.J.** : — This was an action for specific performance. The defendants on October 9th 1952 entered into a contract to purchase certain land in Katong, they having been the highest bidders in an auction and thereafter having signed the usual memorandum and paid a deposit.

The defendants resist this claim owing to the following circumstances. Many years before the then owner of this and other land in the neighbourhood had submitted to the authorities a plan for development as the result of which the land in question is shown on the general improvement plan as an open space under section 50(1)(g) of Cap. 134. As a consequence of this, by virtue of section 58(1) of the same Ordinance, it is not possible to use the land otherwise than as an open space without the permission of the Board.

The plaintiffs were fully aware of this state of affairs as they had themselves sought to develop the land a short time before and had failed to obtain permission. There was no disclosure by the plaintiffs at the time of the sale. Further before the sale the land was advertised as valuable freehold land. The managing director of the defendant Compnny was induced to go to the sale by one of these advertisements. No actual knowledge of this restriction can be imputed to the defendants, and the plaintiffs or their agents must have been aware of this as the price realised at the auction was greatly in excess of what might be expected of anyone with knowledge.

If this had been an ordinary case of a restriction imposed by a covenant or of an easement the answer would have been simple. There would have been a duty to disclose and, unless the contract provided otherwise, the restriction would have constituted a defect of title and thus have afforded a defence to the purchaser and given him a right to the return of the deposit. This would have constituted a good defence both in law and in equity (see *Flight v. Booth*[1], *Dykes v. Blake*[2]). In this case the conditions of sale would not have protected the vendors. Conditions of sale of a general character cannot be used to cover up a known and serious defect of title which is not disclosed. In any event there is, in the present case, no "scheme" within the meaning of the Ordinance.

In the present case the position is different in that the restriction could have been discovered by examination of the relevant plan which is open to public examination. As in fact there was no examination of the plan on behalf of the defendant Company and as the plaintiffs must, when they put the land up for auction, have relied on the probability that an intending purchaser would not examine the plan, I do not consider that this helps the plaintiffs; see again *Dykes v. Blake*[2]; see also the unreported case referred to in *Simmons v. Pennington*[3]. I think that in the circumstances the defendants are entitled to judgment on the claim and counterclaim.

I should also have held that the description "valuable freehold land" was, in the circumstances of the present case, a misrepresentation entitling the purchasers to rescind.

Judgment for the defendants on claim.

Judgment for the defendants on counterclaim for $10,482.50 with costs.

*Judgment for the defendants*

Solicitors: *Sisson & Delay; Laycock & Ong.*

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## SARAH CASHIN v. GOH KAH SENG

[O. C. J. (Whitton J.) March 4, 1955]

[Singapore — Suit No. 689 of 1954]

*Landlord and Tenant — Control of Rent Ordinance, 1953, s. 15(1)(h) — Whether tenant has knowingly committed a breach of a provision of the Municipal Ordinance affecting the premises which exposes the landlord to a penalty — Municipal Ordinance (Cap. 133).*

The plaintiff in this case was the Executrix of the estate of A. W. Cashin, deceased. She claimed, as landlord, possession of premises of which the defendant was the tenant. It appeared that the defendant had (a) erected board partitions for the purpose of forming cubicles without the consent in writing of the Commissioners, and (b) commenced building operations without proper notice to the Commissioners.

Held: (1) before a tenant is deprived of the protection afforded by s. 14 of the Control of Rent Ordinance under the provisions of s. 15(1)(h) thereof not only must he have committed a breach which exposes his landlord to penalty, fine or forfeiture but also he must have known that he was committing a breach at the time of doing so; (2) in this case the two breaches committed by the defendant did expose the plaintiff to a penalty or a fine and as the defendant knew that he was committing the breaches at the time of doing so s. 15(1)(h) of the Control of Rent Ordinance was applicable.

[Editorial Note: Section 15(1)(h) of the Control of Rent Ordinance 1953 reads: "Where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises